

Work Permit Frequently Asked Questions

1. Is a school always required to issue a “Permit to Employ and Work” (B1-4) to an eligible minor?

No. It is solely within the discretion of the school district to determine whether a minor, who is still subject to the state’s compulsory education laws, may obtain a work permit and, therefore, be employed to work.

Each of the laws governing the issuance of work permits uses the word “may,” which is permissive, and, therefore, does not require that the permitted activity be performed. If the statutes had used the word “shall,” which is mandatory, then the school would not have discretion and would have to issue a permit to every eligible minor (*Education Code* 49110, 49111, 49112, 49113, 49114, 49130).

2. Does a high school graduate, or a minor who has passed the California high school proficiency exam, need a work permit?

No. Once a minor is no longer subject to the state’s compulsory education laws, he/she is not considered a minor for purposes of the state’s child labor laws and is not required to obtain a work permit (*Labor Code* 1286[c]). California’s compulsory school attendance law requires a person to attend school until he/she is 18 years of age or has graduated from high school or has passed the high school proficiency examination.

Federal law does not have a similar exception, and occupational restrictions may still apply. Under federal law the employer would still need a certificate of age for the student when employing a high school graduate under 18 years of age. The school may issue a work permit as a certificate of age but other forms of identification are also accepted as proof of age (EC 49114).

3. Can a minor have more than one work permit?

Yes. A minor may work concurrently for more than one employer and, therefore, have more than one valid work permit. But, regardless of the number of employers and work permits, the total number of hours worked may not exceed the total number of hours allowed by law.

4. May a minor who is not a California resident or not enrolled in the school district be issued a work permit?

Yes. The local school district may issue a work permit if the minor enters the attendance area from another state within 10 days or less before the end of the school term. The minor may be issued a permit to work full time because he/she is exempted from school attendance for the remainder of the school term (EC 48321).

The only requirement for work permit issuance is that the minor resides in the district that issues the permit. The minor does not have to be a California resident or be enrolled in the school, or be living with parents, etc. (EC 49110).

Any minor wishing to work in California must adhere to the state’s work standards and regulations, even if not a permanent or full-time resident of California (LC 1286, 1299).

5. May a truant / “dropout” be issued a work permit?

No. A truant/ “dropout” is in violation of California’s compulsory school attendance laws and a school district is not permitted to sanction violation of those laws by issuing a permit to work. A truant/ “dropout” is subject to arrest, and the parents are subject to criminal fines if the minor is found working without a work permit.

6. May an expelled minor be issued a work permit?

Yes. The law does not prohibit issuing a work permit to an expelled minor. An expelled minor must be provided educational services. Options include, but are not limited to, community school, juvenile court school, another school district, etc. When the expelled minor enrolls in and attends school, only the district in which the minor resides may issue - or refuse to issue - the work permit (EC 48915, 48915.01, 48915.2, 48926).

7. Is a parent/employer required to obtain a work permit for his/her child who works for the family business?

Yes. Work permits are required for **all** minors employed in manufacturing, mercantile, or similar commercial enterprises (EC 49141). Exemptions are allowed for agricultural or domestic work performed on land that is owned, operated, or controlled by the parents. All regulations concerning hazardous occupations and other work forbidden to minors remain in effect for minor children working for their parents.

8. Does a parent/employer have to provide Workers’ Compensation Insurance for his/her children/employees?

Yes. Workers’ Compensation Insurance must be provided for an employee, whether or not the employee/minor is the employer’s child. Exceptions may be made for an employer who has been given permission by the Department of Industrial Relations to be self-insured (LC 3700).

9. Does an emancipated minor need a work permit to be employed?

Yes. The only exception from child labor and compulsory school attendance laws enjoyed by an emancipated minor is that he/she may apply for a work permit without the parent’s permission. An emancipated minor may sign, in place of the parent, the “Statement of Intent to Employ Minor and Request for Work Permit” (B1-1) form (*Family Code* 7050[e][16]). An emancipated minor is defined in *Family Code* 7002.

10. In the interest of expediency, may a school issue a blank permit to a minor and, when he/she secures employment, have the employer complete the necessary forms?

No. A school may never issue a blank work permit. The fully completed “Statement of Intent to Employ Minor and Request for Work Permit” (B1-1) must be returned to the school district (EC 49162, 49163). Only the school district has discretion to issue a work permit and the district’s lawfully authorized agent (EC 49110) must complete all conditions as to its issuance.

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11. Must a public school or other governmental agency require a work permit for an employee/minor?

No. It is the position of the California Division of Labor Standards Enforcement that the state's *Labor Code* does not apply to a state or local agency unless the agency is expressly included in the statute. The child labor statutes do not expressly include state or local agencies.

State and local agencies are subject to the federal Fair Labor Standards Act and must follow all its child labor provisions, including having a certificate of age to verify permissible employment. Contact the Wage and Hour Division of the U.S. Department of Labor for further information.

12. How can it be determined whether or not a minor is an independent contractor or an employee?

An independent contractor is a worker who contracts with a business to perform a specific type of work, usually for a limited amount of time. An employee is an individual who is "suffered or permitted to work."

There are many factors used by the Labor Commissioner to establish an independent contractor status. Those factors include, but are not limited to:

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| • control of work conditions and schedules | • supervision |
| • training | • pay |
| • integration | • hours of work |
| • where work is done | • order of tasks |
| • investment in facilities or equipment | • work supplies |
| • working for more than one firm | • business distinct from employer |

For determination of "independent contractor" vs "employee" status, contact the local office of the Industrial Relations Department, Labor Standards Enforcement Division.

13. Who may issue work permits?

Education Code 49110 specifies that only the following persons may issue work permits:

- ?? Superintendent of any local public school district in which any minor resides; or
- ?? Superintendent of county schools if the minor resides in a portion of a county not under the jurisdiction of the superintendent of a school district; or
- ?? Person holding a services credential with a specialization in pupil personnel services authorized, in writing, by the superintendent; or
- ?? Work Experience Education teacher/coordinator authorized, in writing, by the superintendent; or

- ?? Person authorized, in writing, by the superintendent if the designated person is not available, and delay in issuing a permit would jeopardize the ability of the pupil to secure work; or
- ?? Person authorized, in writing, to issue work permits if the superintendent is absent from the district and the district does not employ a person holding the necessary credential or a Work Experience Education teacher/coordinator.

The Division of Labor Standards Enforcement (DLSE) issues all entertainment industry permits. Inquiring parents or employers must be referred to the nearest DLSE office.

14. May a private school issue work permits to its students?

Yes. At the discretion of the superintendent of the public school district, a private school may be authorized, in writing, to issue work permits for its students. The person authorized to issue work permits must be knowledgeable about federal and state labor laws affecting minors and the work permit issuance process (EC 49110).

15. Can a work permit be issued by the public school to a pupil who attends a private school located within the school district boundaries, even though the pupil is not a resident of the school district?

Yes. The California Department of Education, Deputy General Counsel's office, has found that, pursuant to written authorization from the superintendent of the public school district, a work permit may validly be issued for such a pupil.

Further, the findings indicated that the intent of EC 49110 and 49110.1 was not to restrict, on the basis of legal residence, the authority to issue work permits, but rather to consider the school district in which the pupil attends school.

16. Can the local school issue a work permit for a child who is under school age?

No. A child under school age is probably being employed in the entertainment industry. In such a case, the child's work permit must be issued through the Department of Industrial Relations, Department of Labor Standards Enforcement.

17. What process should be followed to issue a "Permit to Employ and Work" (B1-4)?

The minor/student, after obtaining a promise of employment, must obtain the "Statement of Intent to Employ Minor and Request for Work Permit" (B1-1) from the school/school district.

The minor must complete the "minor" section, request that the employer and parent complete their sections (making certain to obtain both required signatures), and then return the completed form to the appropriate school authority.

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The school authority must verify the minor/student's date of birth and the type of work permit to be issued. If all requirements are met, the work permit issuing authority may issue the "Permit to Employ and Work."

At the discretion of the local school district, there may be additional requirements for the issuance of a work permit. For instance, the school district may have a policy requiring the minor to maintain a 2.0 grade point average. In such a case, the work permit issuing authority would need to verify the student's GPA. Another policy might require the minor to exhibit his/her social security card for verification by the school authority. Other local policies should be verified through the work permit issuing authority.

18. Must the work permit issuing authority use only school records to verify the date of birth on the work permit application form (B1-1)?

No. In lieu of school records, the date of birth may be verified by using a birth certificate or a passport. When there are no available official documents, an affidavit by the parents or legal guardian may suffice (EC 49133).

If not using school records, a photocopy of the age verification document should be attached to the school's copy of the work permit.

19. May a work permit be issued for a minor who is being "home schooled"? In other words, when a noncredentialed parent is teaching his/her own child using a correspondence course or other type of course, may the child be issued a work permit?

No. Home schooling is not authorized in California (see Appendix H). But, there are three (3) options, any of which may be used as a substitute in place of local school attendance:

1. Private tutoring: Person must have a valid California teaching credential for the grade level being taught. The credentialed tutor (may be a parent) must provide instruction in all the branches of study required in the public schools during at least 3 hours per day, between 8:00 a.m. and 4:00 p.m. on at least 175 days per calendar year, and in the English language.
2. Private full-time day schools: Must instruct students in all the branches of study required of the public schools.
3. Independent Study Program: Based on a written agreement, the student follows the school district's course of study and the student and his/her work is supervised by a credentialed employee of the district in which the student is enrolled.

If the parent utilizes option #1 and provides instruction at home and if a work permit is issued, the local public school schedule and work standards must be followed.

20. Isn't a "home school" the same as a private school?

No. There are specific factors that differentiate between a "home school" and a private school. The private school:

- ?? is a business,
- ?? must meet local zoning regulations,
- ?? must have a business license,
- ?? must advertise,
- ?? must be open to the public, and
- ?? must charge a reasonable tuition.

The filing of a private school affidavit does not automatically transform a “home school” into a private school nor does the use of a correspondence course of study.

21. Does the school have any discretion to limit the minor’s work activity?

Yes. As a condition of issuance, the local school/school district may reduce maximum work hours and impose additional occupational restrictions not specified in statute or regulation. The work permit issuing authority does not have discretion to extend hours beyond the maximum specified in statute or waive any occupational restrictions specified in statute or regulation.

During the school year, 16- and 17-year-olds are permitted to work up to 48-hours a week (LC 1391). Most schools, however, impose a weekly limit that ranges between 20 and 36 hours per week while school is in session. (See charts in Chapter 2)

22. When school is in session, a 16/17-year-old is permitted to work up to 48-hours a week; 4 hours on school days; and 8 hours on nonschool days and days preceding a nonschool day. Can a 16/17 year old actually work 48 hours in a week while school is in session?

Yes. Federal law defines a week that “school is in session” as a week in which school is scheduled for one day. An example might be the week during which Thanksgiving is celebrated. A school might be in session only on Monday and Tuesday. The minor could work 8 hours per day on Tuesday (day preceding a nonschool day), Wednesday, Thursday, Friday, Saturday, and Sunday. Monday would be the day off. In that example, the student would have worked 48 hours while school was in session (EC 49112, 49116; LC 1391).

23. Can a 14/15-year-old work during the school day?

No. A 14- or 15-year-old is limited to 18 hours per week when public school is in session. All work hours must be outside the scheduled public school schoolday. An exception is made for students enrolled in Work Experience Education or career exploration programs who may work up to 23 hours per week and, if appropriate, during the hours school is in session. (See charts in Chapter 2)

24. What is a “schoolday” and what does “school in session” mean?

A minimum schoolday in any high school (specific exemptions below) or junior high school is defined as any day in which the minor is scheduled to attend school for 240 minutes. Anything less does not qualify as a schoolday and work hours may be increased on such days even though the minor receives instruction on that day (EC 46141, 46142).

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Exemptions to the 240 minute standard are for evening high school, a regional occupational center, an opportunity school and in opportunity classes, a continuation high school, in continuation classes, in late afternoon or Saturday occupationally organized vocational training programs conducted under a federally approved plan for vocational education, and for students enrolled in an approved work experience education program (EC 46141).

Continuation high schools are required to have a 180-minute schoolday. Independent Study programs are defined instructionally in the *Education Code*, but there are no regulations concerning “seat time.”

State law has no definition of “school in session” but the federal government defines the term as any week in which the public school for the county is in session for at least one day.

Private schools must also adhere to public school calendars, hours that school is in session, regulations and related labor laws when issuing work permits (B1-4).

25. How long do copies of work permits have to be retained?

The school district must retain a copy of the work permit application (B1-1) and work permit (B1-4) until the end of the fourth year after the work permit was issued. Those files may be retained on a computer disk(s) which, if requested, can be printed for examination (CCR, T5 16026).

The employer must retain the minor’s work permit until the beginning of the fourth year after the permit was issued (LC 1174, 1299).

26. Does a minor working in a restaurant attached to a casino on an Indian Reservation need a work permit?

There is no definitive answer to this question. Each situation must be dealt with on a case by case basis. Who has jurisdiction? State? Federal? Is the casino run by the tribe or an outside entity? Who is the employer? Is the work area restricted to the restaurant or do the minors serve meals in the casino? Is the restaurant distinctly separate from the casino (e.g., separated by a door) or is it part of the gaming area? Contact your regional office of the California Division of Labor Standards Enforcement with questions about specific situations.

27. Can an entry-level employee be paid less than the minimum wage?

Yes. The Industrial Welfare Commission Orders of 2001 state that “ employees during their first one hundred sixty (160) hours of employment in occupations in which they have no previous similar or related experience, may be paid not less than eighty-five percent (85%) of the minimum wage rounded to the nearest nickel.”

In 2001, with an effective minimum wage of \$6.25 per hour, the “Learners” wage is \$5.30 per hour. As of January 1, 2002, when the minimum wage is increased to \$6.75 per hour, the “Learners” wage will be \$5.73 per hour.

28. When is a student considered a trainee or a volunteer, not an employee?

The Fair Labor Standards Act (FLSA) applies to any person involved in an employer-employee relationship. The FLSA is administered by the U. S. Department of Labor, Wage and Hour Division, with respect to private employment, state and local government employment, and other agency employment.

The mere knowledge by an employer of work done for him/her by another is sufficient to create the employment relationship under the FLSA. The U.S. Department of Labor has always considered work performed as part of an evaluation or training program to be compensable.

Whether a trainee or student is an employee under the FLSA will depend on all of the circumstances surrounding the activities on the premises of the employer. There are three circumstances under which a student is not required to be paid: trainee, volunteer, and in-school placement.

Trainee

If **all six** of the following criteria apply, the trainee/student is NOT an employee within the meaning of the FLSA:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school (i.e., a curriculum is followed and the student is under continued and direct supervision either by representatives of the school or by employees of the business); and
2. The training is intended to benefit the trainee/student rather than to meet the labor needs of the business; and
3. The trainee/student does not displace a regular employee, does not fill a vacant position, does not relieve an employee of assigned duties, and does not perform services that, although not ordinarily performed by employees, clearly are of benefit to the business; and
4. The employer that provides the training derives no immediate advantage from the activities of the trainee/student and, on occasion, the employer's operations may actually be impeded; and
5. The trainee/student is not necessarily entitled to a job at the conclusion of the training period; and
6. The employer and the trainee/student understand that the trainee/student is not entitled to wages for the time spent in training.

Examples of unpaid training include:

- In a hospital – the student job-shadows a nurse following and observing.

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- In a supermarket – the student does *simulated* work with other students and/or the teacher: rings-up baskets of groceries, makes change, learns assorted transactions and returns groceries to the shelves.
- In an office – the student enters worthless data on a company computer that is not used to conduct business.

Volunteer

Commercial businesses may never legally utilize unpaid volunteers.

An individual may serve as unpaid volunteer for public service, religious or humanitarian objectives. Typically authorized volunteer sites include *established* volunteer programs operated by charitable nonprofit organizations, governmental agencies, hospitals, and nursing homes. A student may be provided opportunities to participate in meaningful educational activities or programs. For example, a student may *choose* to assist with school fundraisers, deliver meals to the homebound, visit patients in nursing homes, or solicit contributions.

A student may be considered to be a “volunteer” within the meaning of the FLSA if the intent is clearly to donate his/her services for the public good. Schools may not legally *require* a student to “volunteer” or perform unpaid public service as a way to gain vocational experience, as a condition of graduation, or as a prerequisite for other school activities. Only the courts may require or commit persons to perform unpaid public service work as part of a correctional program, in lieu of serving prison time, or while in a work-release program.

A person employed by a religious, charitable, governmental, or nonprofit organization is not allowed to “volunteer” the same type of services (any activity directly related to the job) during the weeks employed.

Examples of volunteers:

- The student *chooses* to participate voluntarily at the city’s established zoo volunteer program.
- The student volunteers as a “Candy Striper” to donate some spare time to helping patients in a hospital.

In-School Placement

As part of the overall educational program, schools may permit or require a student to engage in various school-related work programs, within the school district, conducted primarily for the benefit of the student for periods of no more than an hour per day (or an equivalent amount of overall time).

Examples of in-school placement:

- The student helps in the school lunchroom for periods of 30 minutes to one hour per day.
- The student performs minor clerical work in the school office or library.

Application of the Fair Labor Standards Act (FLSA) to School-Related Programs

Do students have to be paid? Do FLSA child labor laws apply?

With respect to the individual student's placement at a business establishment, do all of the following criteria apply?

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| <input type="checkbox"/> YES <input type="checkbox"/> NO | 1. The training, even though it includes actual operation of the employer's facilities, is similar to that which would be given in a vocational school (i.e., a curriculum is followed and the student is under continued and direct supervision either by representatives of the school or by employees of the business. |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | 2. The training is for the benefit of the trainee or student; such placement is <i>not</i> made to meet the labor needs of the business. |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | 3. The trainee or student does not displace a regular employee, does not fill a vacant position, does not relieve an employee of assigned duties, and does not perform services that, although not ordinarily performed by employees, clearly are of benefit to the business. |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | 4. The employer providing the training derives <i>no advantage</i> from the activities of the trainee or student and, on occasion, the employer's operations may actually be impeded. |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | 5. The trainee or student is not necessarily entitled to a job at the conclusion of the training period. |
| <input type="checkbox"/> YES <input type="checkbox"/> NO | 6. The employer and the trainee or student understand that the trainee or student is not entitled to wages for the time spent in training. |

YES to all six criteria

The individual student is NOT an employee within the meaning of the FLSA. Wages are not required.

NO to any of the six criteria

Either the business *or* the school system must compensate the student worker; both parties are jointly responsible for compliance with labor laws.